

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
RANDALL WILLIAM CLARY,
Defendant.

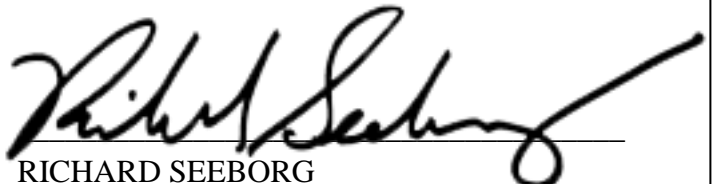
Case No. [10-cr-00668-RS-1](#)

**ORDER GRANTING RANDALL
WILLIAM CLARY'S MOTION FOR A
CERTIFICATE OF APPEALABILITY**

On November 9, 2016, Randall William Clary's motion to have his sentence vacated pursuant to 28 U.S.C. § 2255 was denied. Clary now seeks a certificate of appealability to challenge the determination that unarmed bank robbery remains a crime of violence notwithstanding the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). One day after the order denying Clary's § 2255 motion issued, another district court in the Ninth Circuit concluded unarmed bank robbery is not a crime of violence after *Johnson*. See *Doriety v. United States*, No. CV 16-924-JCC (W.D. Wash. Nov. 10, 2016). Thus, Clary has shown the issue is not frivolous, *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000), and that reasonable jurists would "find the district court's assessment of the constitutional claims debatable or wrong," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). His motion for a certificate of appealability is therefore granted.

IT IS SO ORDERED.

Dated: November 18, 2016


RICHARD SEEBORG
United States District Judge